Nos. 14 and 15

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS OF AMERICA, A. F. OF L., LOCAL 232; ANTHONY DORIA, CLIFFORD MATCHEY, WALTER BERGER, ERWIN FLEISCHER, JOHN M. CORBETT, OLIVER DOSTALER, CLARENCE EHRMANN, HERBERT JACOBSEN, LOUIS LASS,

Petitioners,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, HENRY RULE and J. E. FITZGIBBON, as Members of the Wisconsin Employment Relations Board; and BRIGGS & STRATTON CORPORATION, a Corporation,

Respondents.

ON APPEAL FROM THE SUPREME COURT OF WISCONSIN

BRIEF FOR THE COMMONWEALTH OF PENNSYLVANIA, AMICUS CURIAE

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SUBJECT INDEX

TABLE OF CASES CITED

STATUTES CITED

MISCELLANEOUS AUTHORITIES

Case Caption.

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I. OPINION OF THE COURT BELOW

The opinion of the Supreme Court of the State of Wisconsin is reported in 250 Wis. 550, 27 N. W. 2d. 875 (R. 106-121).

II. STATEMENT AS TO JURISDICTION

The Commonwealth of Pennsylvania makes no claim, (and does not admit), that the instant case is one over which the Court has jurisdiction under the provisions of Section 237 of the Judicial Code, 28 U. S. C., section 344, 28 U. S. C. A. section 344. (Act of Congress of February 13, 1925, C. 229, section 1, 43 Stat. 937; Act of Congress of January 31, 1928, C. 14, section 1, 45 Stat. 54).

III. QUESTION PRESENTED

The only question discussed in this brief is:

Whether jurisdiction of the Wisconsin Employment Relations Board, the agency administering the Wisconsin Employment Peace Act (Wisconsin Laws of 1939, Chapter 57, as amended by Wisconsin Laws of 1943, Chapter 375, Wisconsin Laws of 1945, Chapter 424 and Wisconsin Laws of 1947, Chapter 2; Chapter 111, Sub-Chapter 1 of the Wisconsin Statutes, Sections 111.01 to 111.09) has been ousted by paramount federal authority in the instant case?

IV. STATUTES INVOLVED

The relevant provisions of the Labor Management Relations Act, 1947, (Act of June 23, 1947, Public Law 101, 80th Congress, 1st Session, 29 U. S. C. A. 151 et seq. (1947 Pocket Part)., defining unfair labor practices, are set forth in Appendix 1, infra, pp. 48-52. The relevant provisions of the Wisconsin Employment Peace Act, (Wisconsin Laws of 1939, Chapter 57, as amended by Wisconsin Laws of 1943, Chapter 375, Wisconsin Laws of 1945, Chapter 424 and Wisconsin Laws of 1947, Chapter 2; Chapter 111), defining unfair labor practices, are set forth in Appendix 2, infra, pp. 53-57.

V. STATEMENT OF THE CASE

The facts of the case as stated by the Court below are as follows:

The Briggs & Stratton Corporation was engaged in manufacturing and operating two plants in Wisconsin. A contract between the petitioner, International Union, U. A. W. A., A. F. of L., Local 232, et al., and the company had expired. The union was the representative of the employees for the purpose of collective bargaining. Collective bargaining was in process to fix the terms of a new contract. During such bargaining both plants were in operation. While so in operation the employees of the company at the instance of the union and its officers had by concerted action while at work stopped work during their scheduled working hours and remained away until their next scheduled hour for commencement of work. The work was conducted by two shifts. The day shift quit work during their working hours and stayed away until the following morning and then resumed work. The night shift on these occasions when the day shift quit work failed to appear for work during their scheduled hour for work the night of that day and returned for and resumed work at their scheduled hour for commencing work on the next night. The total number of these instances was twenty-seven. In each instance the employees of the shift left in an orderly manner and went directly to attend a union meeting off the premises previously ordered by the union.

These meetings were called by certain of the defendants as officers or committees of the union at irregular times. No advance notice of the meetings was given to either the company or the employees because it was considered that without any notice the stoppages would most lessen production and effect injury on the company. The times were fixed without any other reason or purpose. The employees were told to go forthwith and went as told. The action of the employees was a concerted effort to, and did, interfere with production and was taken as economic pressure to compel the company to comply with the union's demands respecting the terms of the contract being negotiated. It was a concerted action taken for the purpose of interfering with production and it so operated. No secret ballot was taken by a majority of the employees of the collective bargaining unit involved to call a strike precedent to any one of the walkouts, or precedent to the succession of walkouts, although the employee members of the union present at a union meeting did vote, but not by secret ballot, to walk out as might be directed by a committee of the union. No demand was made upon the company that any or a succession of walkouts would be engaged in unless the company acceded to the terms of the new contract as proposed by the union.

The Wisconsin Employment Relations Board specifically further found:

"That all of such work stoppages were engaged in for the purpose of interfering with the production of the complainant and by such interference to induce and compel the complainant to accede to the demands of the union to be

included in the collective bargaining agreement being negotiated between the parties.

"That the respondent union and the individual respondents have publicly stated that it is their intent and purpose to continue to engage in work stoppages similar to the stoppages engaged in on November 6, 1945, and twenty-six times since then, up to and including the 22d day of March, 1946, for the purpose of inducing and coercing the complainant into compliance with their demands; and have threatened employes that failure to engage in such work stoppages and to attend the union meetings following such stoppage when directed by the respondent union and its officers, will result in punishment to employes of the complainant.

"That several employes of the complainant who failed and refused to take part in such work stoppages had their locker boxes damaged, clothing cut, ripped and otherwise damaged, tools and other property concealed or injured, and were subjected to assaults and threats of violence. That such acts were committed in the main on the property of the complainant company by persons unidentified.

"That the employes within the collective bargaining unit represented by the respondent union and employed by the complainant, never conducted a vote of any kind at which the union was directed to call a strike and that no strike has been called by the respondent union nor by the employees of the Briggs & Stratton Corporation against the company at any time."

(R. 106, 107, 108).

VI. INTEREST OF THE COMMONWEALTH OF PENNSYLVANIA.

The Commonwealth of Pennsylvania has a statute, commonly known as the "Pennsylvania Labor Relations Act", being the Act of June 1, 1937, P. L. 1168, to be found in 43 PS, sections 211.1 to 211.13 inclusive, which as enacted was virtually a transcript of the National Labor Relations Act of July 5, 1935. By reason of amendments to the Pennsylvania Labor Relations Act, the statutes became somewhat divergent with respect to procedural provisions, but the two acts remained identical as to objects and purposes. The Pennsylvania statute, at no point, is either contrary or repugnant to the policies of Congress as set forth in the National Labor Relations Act of 1935, or its successor, the Labor Management Relations Act, 1947. It does not deprive any employee, subject to the jurisdiction of state authority, of rights protected or guaranteed by federal legislation.

The Pennsylvania statute provides for administration under two broad classifications. The first class has to do with the ascertainment of an appropriate bargaining unit and the certification of the collective bargaining representatives who shall have been designated or selected by the majority of the employees in that unit. The second class is for the prevention of unfair labor practices. Thereunder

the agency hears complaints, states findings of fact, and may make "cease and desist" orders or other orders appropriate to the effectuation of the policies of the Act.

Section 6 of the Pennsylvania Labor Relations Act which defines unfair labor practices, as originally enacted on June 2, 1937, was a transcript of Section 8 of the National Labor Relations Act. The only unfair labor practices defined therein were employer unfair labor practices. However, by the amendatory Acts of June 9, 1939, P. L. 293; June 30, 1947, P. L. 1160; and July 7, 1947, P. L. 1445, all to be found in 43 PS section 211.6 (pocket part), the Act presently defines employee or labor union unfair labor practices as follows:

> "(2) It shall be an unfair labor practice for a labor organization, or any officer of a labor organization, or any agent or agents of a labor organization, or any one acting in the interest of a labor organization, or for an employe or for employes acting in concert—
>
> (a) To intimidate, restrain, or coerce any employe for the purpose and with the intent of compelling such employe to join or to refrain from joining any labor organization, or for the purpose or with the intent of influencing or affecting his selection of representatives for the purposes of collective bargaining.
>
> (b) During a labor dispute, to join or become a part of a sit-down strike, or, without the employer's

authorization, to seize or hold or to damage or destroy the plant, equipment, machinery, or other property of the employer, with the intent of compelling the employer to accede to demands, conditions, and terms of employment including the demand for collective bargaining.

(c) To intimidate, restrain, or coerce any employer by threats of force or violence or harm to the person of said employer or the members of his family, with the intent of compelling the employer to accede to demands, conditions, and terms of employment including the demand for collective bargaining.

(d) (Act of June 30, 1947) To picket or cause to be picketed a place of employment by a person or persons who is not or are not an employe or employes of the place of employment.

(d) (Act of July 7, 1947) To engage in a secondary boycott, or to hinder or prevent by threats, intimidation, force, coercion or sabotage the obtaining, use or disposition of materials, equipment or services, or to combine or conspire to hinder or prevent by any means whatsoever, the obtaining, use or disposition of materials, equipment or services.

(e) To call, institute, maintain or conduct a strike or boycott against any employer or industry or to picket any place of business of the employer or the industry on account of any jurisdictional controversy."

Interest of the Commonwealth of Pennsylvania

After the decision of Your Honorable Court in *Bethlehem Steel Company, et al. v. New York State Labor Relations Board*, 330 U. S. 767, which was decided April 7, 1947, the Supreme Court of Pennsylvania, on September 29, 1947, handed down a decision in *Pittsburgh Railways Company Substation Operators and Maintenance Employees' Case*, 357 Pa. 379, 54 A. 2d 891, wherein it was held that *the criterion to determine the validity of the exercise of state power is not whether the agency administering federal law has acted upon the relationship in a given case, but rather whether Congress has asserted its power to regulate that relationship.* It was held that the Pennsylvania Labor Relations Board could not constitutionally entertain the petition for the bargaining agent of the employes in that case, upon a record showing that the National Labor Relations Board had never assumed jurisdiction over the employer or any of its employees, on the theory that Congress had asserted its power of regulation, and jurisdiction in the National Labor Relations Board was exclusive.

As a result of this decision of Pennsylvania's highest appellate court, many cases upon appeal from final orders of the Pennsylvania Labor Relations Board are now pending in the courts of Pennsylvania and, in two instances, the Board has been restrained by courts of the United States from making investigations commanded by the Pennsylvania statute in cases involving employees of Pennsylvania employers. See

Interest of the Commonwealth of Pennsylvania

Food, Tobacco, Agricultural and Allied Workers Union of America, Local 186, *etc. v. Smiley et al.*, 74 F. Supp. 823 (1946); 164 F. 2d 922 (1947);

United Office and Professional Workers of America v. Smiley et al., 77 F. Supp. 659 (1948).

Wherefore, Pennsylvania, like Wisconsin, has a vital interest in the question: How far and to what extent is the Pennsylvania agency barred from administering the state statute by reason of the enactment of the Labor Management Relations Act, 1947?

VII. SUMMARY OF ARGUMENT

(1). The Labor Management Relations Act, 1947 does not ipso facto preclude state legislation applicable to the same situations covered by federal statute. There is nothing in the record showing that the employer, Briggs & Stratton Corporation ever was a party to any proceeding before the National Labor Relations Board or, in fact, was before the National Board in any proceeding or manner other than in March, 1938, the National Board assumed jurisdiction over a petition for certification of the company's employes and certified the Petitioner as having been designated the collective bargaining agent, which certification has never been set aside, reversed or modified. The instant case comes squarely within the rule that unless or until the National Board has elected to exercise its jurisdiction over the particular controversy involving the same issues before the State Board, the State Board is free to exercise its jurisdiction under the analogous or consistent provisions of the State Act.

It is the established rule that the jurisdiction of a federal agency and a state agency is concurrent whenever the state legislation does not contravene the provisions of the federal legislation, (absent a clear and manifest purpose of Congress to the contrary), except where the jurisdiction of the federal agency, has, in fact, been invoked or

exercised in the particular matter in controversy before the state agency.

(2) *Bethlehem Steel Company et al. v. New York State Labor Relations Board*, 330 U. S. 767 (1947) has no application to the instant case as there is nothing in that case to indicate an intended ruling that a state agency is without power to administer the state act with respect to charges of unfair labor practices against employers, employees or unions, provided that the state policy is not contrary or repugnant to federal policy.

The Bethlehem Steel Company case is an application of the doctrine that state regulation cannot be permitted to frustrate national policy especially where, as in that case, federal policy was definitely adverse to foremen unionization and not merely neutral in the matter.

(3) Congress in enacting the Labor Management Relations Act, 1947 did not intend to strike down the Pennsylvania Labor Relations Act under the rule that the historic police powers of states are not to be superseded by a federal act unless that was the clear and manifest purpose of Congress. This is especially true of the Labor Management Relations Act, 1947 because the scope of federal power may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them would effectually obliterate the distinction between what is national and what is local and create a completely centralized government.

(4) The Labor Management Relations Act, 1947 does not touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject. An implied intent to exclude state administration of the state labor relations act should not be found because there has been little or no conflict since 1937 when the Wisconsin and Pennsylvania Acts came into force and effect. Also, as the purpose of the federal legislation is not primarily to regulate commerce but to secure and preserve industrial peace, the federal interest is not so dominant that the state should be precluded from applying its own policy, when not inconsistent with federal policy, to secure and preserve industrial amity.

Federal legislation like the Alien Registration Law of 1940 and the United States Warehouse Act are to be distinguished. This case calls for the application of the rule "that where the government has provided for collaboration, the courts should not find conflict."

(5) The object sought to be obtained, and the character of the obligations imposed, by the Labor Management Relations Act, 1947 does not reveal a legislative intent to preclude enforcement of state laws on the same subject. Section 10(a), which provides for the ceding of jurisdiction in certain cases, does not evince the clear and manifest purpose of Congress to bar concurrent jurisdiction, which is the test of legislative intent.

Congress intended to permit its agency to cede jurisdiction over cases of labor disputes where state adminis-

tration was otherwise barred because federal authority had been asserted in the particular case or labor dispute.

As implied congressional intent is dependent upon the character of the federal statute and upon the public interest to be served by maintaining state administration under the state statute, it should not be held that the Labor Management Relations Act, 1947 impliedly evinces an intent to strike down the Wisconsin statute or preclude its administration by the Wisconsin Employment Relations Board.

(6) Wisconsin policy has not produced a result inconsistent with, or repugnant to, the objectives of the Labor Management Relations Act, 1947 in the instant case.

When comparison of the unfair labor practices defined in the Wisconsin statute is made with the unfair labor practices defined in the federal act, it is certain that no Wisconsin employer or employee is deprived of rights protected or granted by the Constitution of the United States or by the federal statute. Since the state system of regulation as construed and applied in the instant case can be reconciled with the federal act and since the two as focused in this case can consistently stand together, the order of the State Board should be sustained and the judgment of the court below affirmed.

VIII. ARGUMENT

(1)

The Labor Management Relations Act, 1947, does not ipso facto preclude state legislation applicable to the same situations covered by the federal statute.

In Petitioner's Brief, at page 11, it is said that "By the passage of the Labor Management Relations Act of 1947, Congress has expressly pre-empted the field of unlawful conduct on the part of labor unions and employees and has established a comprehensive code for regulation and treatment of such conduct," and "has expressly excluded the state from assuming concurrent jurisdiction over unfair labor practices committed by unions or employees" unless permission is given by the National Labor Relations Board to the state agency. The reasons urged by Petitioner to bar the states from exercising jurisdiction over labor disputes, if and when it is found that the employer is engaged in interstate commerce, or where the employer's operations affect interstate commerce, are substantially the same reasons which were urged to bar state jurisdiction during the period that the National Labor Relations Act was in force and operation. The rule universally accepted by courts has been that the National Labor Relations Act did not ipso facto preclude state legislation applicable to the same situations covered by the federal statute. This rule was

expressed in various ways. In *Davega City Radio, Inc. v. State Labor Relations Board*, 281 N. Y. 13, 22 N. E. 2nd 145, 147, 148, 149 (1939), a decision of the Court of Appeals of New York considering the New York State Labor Relations Act as originally enacted when it was virtually a transcript of the National Labor Relations Act, it was said by Finch, J., that (italics ours):

> "*From a study of authorities it does not appear that the National Labor Relations Act ipso facto precludes the State legislation applicable to the same situations.* * * * That the National Labor Relations Board is given exclusive jurisdiction under the National Act is of significance only in fixing the appropriate agency to enforce the National act, and is not relevant to the question whether a consistent State law may co-exist with a National Act.
>
> "*We reach the conclusion, therefore, that the State Labor Relations Board may enforce the State act at least until such time as it is ousted by the exercise by the National Labor Relations Board of its jurisdiction under the National act.* * * *"

In *Wisconsin Labor Relations Board v. Fred Rueping Leather Co.*, 228 Wis. 473, 279 N. W. 673, 677 (1938), wherein the Supreme Court of Wisconsin considered the Wisconsin Labor Relations Act of 1937, which was repealed in 1939 when the Wisconsin Employment Peace Act was enacted, it was said by Wickham, J., that (italics ours):

> "It is not seriously contended that the Wisconsin act, which is conceded to be nearly identical both in

purpose and method with the national act, discriminates against or unduly burdens interstate commerce. *The conclusion is inevitable that it constituted a valid exercise of the police power of this state even as to those labor relationships which fall within the commerce clause* * * *"*

In *Allen-Bradley Local No.* 1111, *etc. v. Wisconsin Employment Relations Board, et al.*, 237 Wis. 164, 295 N. W. 791 (1941), the contention was made that "The Wisconsin Act and the National Act both regulate the same subject; that the Wisconsin Act is so inconsistent with and in conflict with the National Act, in the public policy each Act seeks to enforce and in their major terms and provisions, that the two acts cannot consistently stand together, in so far as applicable to interstate commerce."

Chief Justice Rosenberry, in answering these contentions, said at page 800, that (italics ours):

"Appellants specified nine ways in which the state and federal acts conflict but as already pointed out, *these conflicts do not exist until the National Labor Relations Act is applied by the National Labor Relations Board in a particular case. As has already been pointed out state power is not destroyed by federal action, it is merely suspended in a particular case. If a man who owns and possesses a tool and is forbidden to use it, he still has the tool. He is deprived not of the tool but of the power to make use of it. The state is not deprived of its power to deal with labor relations by the National Labor Relations Act. Its power is*

suspended so far as is necessary to give effect to that act."

In *American Federation of Labor, et al. v. Reilly, et al.*, 113 Colo. 90, 155 P. 2d 145, 150, 151 (1944), a decision of the Supreme Court of Colorado, in a proceeding to test the constitutionality of the Colorado Labor Peace Act, which is patterned very closely on the Wisconsin Employment Peace Act, it was said by Knouse, J., with respect to *Allen-Bradley Local No. 1111 etc., et al. v. Wisconsin Employment Relations Board, et al.*, 315 U. S. 740 (1942), hereinafter considered in this brief (italics ours):

> *"* * * * the control which Congress, under the commerce clause, had asserted over the subject matter of labor disputes in passing the National Labor Relations Act, was not so pervasive or exclusive as to prevent Wisconsin, in the exercise of its police power, from enacting legislation regulating the type of employee or union activity involved in the challenged order, which was upheld. * * * Congress had 'designedly left open an area for state control,' and that conflicts between federal and state enactments, or orders arising therefrom, within that area should be resolved only upon 'concrete and specific issues raised by actual cases'."*

There is nothing in the record showing that the employer, Briggs & Stratton Corporation, ever was a party to any proceeding before the National Labor Relations Board. This employer was never before the National Board in any proceeding or in any manner other than in March,

1938, the National Board assumed jurisdiction over a labor dispute between its employees as to representation for collective bargaining, and in that proceeding Petitioner was certified as having been designated the collective bargaining agent for all hourly paid employees of the employer, which certification has not been set aside, reversed or modified (R. 91). There is no other union which has bargaining relations with the employer (R. 33). Employer has from time to time had written contracts with Petitioner, and before and since the last contract expired in 1944, there have been negotiations for a new contract between the parties (R. 34).

Obviously, this case comes squarely within the rule succinctly stated in 174 ALR 1071, 1072 (1948) that (italics ours):

> "*Unless or until the National Board has elected to exercise its jurisdiction under the national act over the particular controversy involving the same issues as those before the state board, the state board is free to exercise its jurisdiction under the analogous or consistent provisions of the state act.* * * *.*
>
> "*And, conversely, it was held that the jurisdiction of the State Labor Relations Board may be ousted if the Federal Labor Relations Board has elected to exercise its jurisdiction over the particular matter in dispute under its authority under the national act.* * * *.*"

All judicial authority supports the view that the jurisdiction of a federal agency and a state agency is concurrent whenever the state legislation does not contravene the provisions of the federal legislation—absent a clear and mani-

fest purpose of Congress to the contrary—*except where the jurisdiction of the federal agency has in fact been invoked or exercised in the particular matter in controversy before the state agency*, and not the view expressed by the Supreme Court of Pennsylvania in *Pittsburgh Railways Company Substation Operators and Maintenance Employees case*, 357 Pa. 379, 54 A. 2d 891 (1947), of exclusive jurisdiction of the Federal agency unless or until federal jurisdiction is relinquished in favor of state jurisdiction. It was said by Chief Justice Hughes in *Kelly v. State of Washington*, 302 U. S. 1, 11 (1937), quoting from *Reid v. Colorado*, 187 U. S. 137, 149, 150 (1902), that (italics ours)

> "* * * *It should never be held that Congress intends to supersede, or by its legislation suspend, the exercise of the police powers of the states, even when it may do so, unless its purpose to effect that result is clearly manifested. This court has said—and the principle has been often reaffirmed that 'in the application of this principle the supremacy of an act of Congress in a case where the state law is but the exercise of a reserved power, the repugnance or conflict be direct and positive, so that the two acts could not be reconciled or consistently stand together'.*"

Clearly in point is *Allen-Bradley Local No. 1111, etc. et al. v. Wisconsin Employment Relations Board, et al., supra*, wherein at page 741, it was said by Mr. Justice Douglas that (italics ours):

> "*The sole question presented by this case is whether an order of the Wisconsin Employment Rela-*

*tions Board entered under the Wisconsin Employment Peace Act * * * is unconstitutional and void as being repugnant to the provisions of the National Labor Relations Act, * * * "*.

In this opinion, it was further stated by the Court at pages 745, 749 that (italics ours):

"It was admitted that the company was subject to the National Labor Relations Act. The federal Board, however, had not undertaken in this case to exercise the jurisdiction which that Act conferred on it. Accordingly, the Supreme Court of Wisconsin upheld the order of the state Board stating that 'there can be no conflict between the acts until they are applied to the same labor dispute.' * * *

* * * * * * *

"* * * this Court has long insisted that 'an intention of Congress to exclude states from exerting their police power must be clearly manifested'. * * * "

Particularly in point is *Southern Pac. Co. v. State of Arizona*, 325 U. S. 761, 766 (1945), wherein Chief Justice Stone said (italics ours):

"*Congress, in enacting legislation within its constitutional authority over interstate commerce, will not be deemed to have intended to strike down a state statute designed to protect the health and safety of the public unless its purpose to do so is clearly manifested, * * * or unless the state law in terms or in its practical administration, conflicts with the Act of*

Congress, or plainly and palpably infringes its policy. * * * "

It has been held by Your Honorable Court that cease and desist orders of the Wisconsin Employment Relations Board, entered against unions and employees for the violation of the several unfair labor practices enumerated in Section 6 of the Wisconsin Employment Peace Act, were not unconstitutional and void as being repugnant to the provisions of the National Labor Relations Act of 1935:

Hotel & Restaurant Employees' International Alliance, Local No. 122 et al., v. Wisconsin Employment Relations Board et al., 315 U.S. 437 (1942);

Allen-Bradley Local No. 1111 etc., et al. v. Wisconsin Employment Relations Board et al., supra;

Wisconsin Employment Relations Board v. Milk & Ice Cream Drivers & Dairy Employees Union, Local No. 225, 238 Wis. 379, 299 N.W. 31 (1941), certiorari denied 316 U.S. 668 (1942);

Christoffel et al. v. Wisconsin Employment Relations Board et al., 243 Wis. 332, 10 N.W. 2d 197 (1943), certiorari denied 320 U.S. 776 (1943).

In the last mentioned case, wherein it was a matter of record that the union was the bargaining representative of the employees by virtue of a certification previously made by the National Labor Relations Board, it was said by Fowler, J., that (italics ours):

" * * * *there was no conflict of jurisdiction because proceedings between the interested adverse*

parties had been before the national board involving matters not in issue before the state board.''

It is because

> *"the rights of employers and employees to conduct their economic affairs, and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist",*

and because the unfair labor practices to be found in Section 6 of the Wisconsin Employment Peace Act are but instances *"of the power of the State to set the limits of permissible contest open to industrial combatants.":*

Thornhill v. Alabama, 310, U.S. 88, 103, 104 (1940);

Carpenters and Joiners Union of America, Local No. 213 et al. v. Ritter's Cafe et al., 315 U.S. 722, 728 (1942),

that the judgment of the Court below should be affirmed.

The following questions remain for consideration and will hereafter be answered in this brief under appropriate headings:

1. Did *Bethlehem Steel Company et al. v. New York State Labor Relations Board*, 330 U.S. 767 (1947), announce a new canon of construction which bars state jurisdiction in the instant case?

2. Did Congress, in enacting the Labor Management Relations Act, 1947, intend to strike down the Wisconsin Employment Peace Act by providing for a scheme for

federal regulation so pervasive as to make reasonable the inference that Congress left no room for Wisconsin to supplement it?

3. Does the Labor Management Relations Act, 1947, touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject?

4. Do the objects sought to be attained, or the character of the obligations imposed by the Labor Management Relations Act, 1947, reveal a legislative intent to preclude enforcement of state laws on the same subject?

5. Has Wisconsin's policy in the instant case produced a result inconsistent with or repugnant to the objectives of the Labor Management Relations Act, 1947?

(2)

The Bethlehem Steel Company decision has no application to the instant case.

In *Bethlehem Steel Company, et al. v. New York State Labor Relations Board, supra*, the appeals challenged the validity of the New York State Labor Relations Act as applied to a manufacturing corporation to permit unionization of foremen. However, there is nothing in the opinion of Mr. Justice Jackson in that case to indicate an intended ruling that a state agency is without power to administer the state act with respect to charges of unfair labor practices against employers, employees or unions, provided that the state policy is not contrary or repugnant to Federal policy. It was because of the decision in *Packard Motor Car Co. v. National Labor Relations Board*, 330 U.S. 485 (1947), holding that foremen have an absolute right to organize in foremen unions under the National Labor Relations Act, that the power of the New York agency to exercise jurisdiction over units limited to foremen did not exist. The sole objection to state jurisdiction in the Bethlehem Steel Company case was the oft repeated rule of Federal construction that, in a given case, state jurisdiction is ousted when the state statute, or state administration thereunder, "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress:"

Hines et al. v. Davidowitz et al., 312 U.S. 52, 66, 67 (1941):

Hill et al. v. State of Florida, 325 U.S. 538, 542 (1945).

It was said by Mr. Justice Jackson in

Bethlehem Steel Co. et al. v. New York State Labor Relations Board, supra, at page 776 (italics ours):

"* * * The federal board * * * asserts, and rightfully so, under our decision in the Packard case, supra, its power to decide whether these foremen may constitute themselves a bargaining unit. We do not believe this leaves room for the operation of the state authority asserted."

The contention of the Commonwealth of Pennsylvania has the support of the three well considered decisions of the Supreme Court of Wisconsin now before this Court for review. The Court below appropriately said (italics ours):

"* * * *The point at issue in the Bethlehem Steel Co. case, supra, was * * * whether the State Labor Relations Board could under a state act on petition of foremen in an industrial plant authorize formation of a unit for furthering their mutual interests and for collective bargaining which the National Labor Relations Board under a Federal act had declined to authorize.* * * *"*

"* * * *What the court held was that the National Labor Relations Board had exercised the jurisdiction delegated to it under the Federal Act by declining to designate the foremen as a bargaining unit.* The dec-

lination was an exercise of its jurisdiction, just as much as granting it would have been. The jurisdiction vested in the National Labor Relations Board was to determine whether it would designate the foremen as a bargaining unit, and it exercised jurisdiction when it denied the application.

*No such situation exists in the instant case as was involved in the Bethlehem Steel Co. case, supra, * * * no application has been made to the National Labor Relations Board to exercise any jurisdiction of the labor dispute here involved. The National Labor Relations Board not having exercised any jurisdiction of such labor dispute the State Board may exercise jurisdiction of it. No conflict is here involved. * * *"* (R. 118, 119).

In *Wisconsin Employment Relations Board v. Algoma Plywood & Veneer Co.*, 252 Wis. 549, 32 N.W. 2d 417, 420, 421 (1948), there is a comprehensive discussion of *Bethlehem Steel Co. v. New York State Labor Relations Board, supra.* It was said by Wickham, J., that (italics ours):

"We now come to the case of Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767, 67 S. Ct. 1026, 1028, 91 L. Ed. 1234. That case dealt with a situation in which the New York State Labor Board had permitted foremen to organize to constitute a collective bargaining unit. The question whether foremen should consistently with the policy of the national act be organized as a bargaining unit had had various solutions by the National Board. In the beginning it

had recognized the rights of the foremen and 'later, there was a period when, for policy reasons but without renouncing jurisdiction, it refused to approve foreman organization units.' The application of the foremen to the state board was the result of this policy on the part of the national board. *Later during the pendency of the case in the courts of the state of New York the Supreme Court in Packard Motor Car Company v. National Labor Relations Board*, 330 U.S. 485, 67 S. Ct. 789, 91 L. Ed. 1040, *had held that the national act entitled foremen to the rights of self-organization under the act*: The court in the Bethlehem case (330 U.S. 767, 67 S. Ct. 1030) follows the decision in the Allen-Bradley case to the effect that in the national act congress has 'sought to reach some aspects of the employer-employee relations out of which such inferences arise. * * * Where it leaves the employer-employee relation free of regulation in some aspects, it implies that in such matters federal policy is indifferent, and since it is indifferent to what the individual of his own volition may do we can only assume it to be equally indifferent to what he may do under compulsion of the state,' citing the Allen-Bradley case. It was 'held, however, following the case of Hill v. State of Florida, 325 U.S. 538, 65 S. Ct. 1373, 89 L. Ed. 1782, that 'the power of the state may not so deal with matters left to its control as to stand "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress"'. *The court concluded that where Congress had implemented the act by the delegation of rulemaking power to an administrative body*

and where that body in the exercise of its delegated power has adopted a rule of policy the state power is abrogated, at least so far as the subject matter of the rule is concerned. While the state regulation in some fields may be invalid even though a particular phase of the subject has not been covered by rule it was held that where the measure in question relates to what might be considered a separate or distinct segment of the matter, the states are generally permitted to exercise their police power as to the matters omitted by the administrative rules. It is said, however, that 'the conclusion must be otherwise where failure of the federal officials affirmatively to exercise their full authority takes on the character of a ruling that no such regulation is appropriate or approved pursuant to the policy of the statute.' The court points out that the failure of the National Labor Relations Act to entertain the foremen's petitions was of the latter class; that the board had never denied its jurisdiction over the petitions and had made it clear that its refusal to designate foremen's bargaining units 'was a determination and an exercise of its discretion to determine that such units were not appropriate for bargaining purposes.' The court then says:

'The State argues for a rule that would enable it to act until the federal board had acted in the same case. But we do not think that a case by case test of federal supremacy is permissible here. The federal board has jurisdiction of the industry in which these particular employers are engaged and has asserted control of

their labor relations in general. • • • We do not believe this leaves room for the operation of the state authority asserted.' • • •

The Bethlehem case has limited the case-by-case doctrine commonly attributed to the Wisconsin decisions only to the extent of holding that where there has been a valid general exercise of its administrative power by the National Labor Relations Board neither repugnant provisions of the state law nor repugnant policies of the state board are effective to defeat the purpose and policy of the exercise. See 'The Taft-Hartley Act and State Jurisdiction Over Labor Relations', Russel A. Smith, 46 Michigan Law Review 593 at page 609, where in commenting upon the Bethlehem case it is said:

'On its facts the case is easily understood simply as an application of the doctrine that state regulation cannot be permitted to frustrate national policy — in this situation a policy definitely adverse to foremen unionization, not merely neutral in the matter'.''

For reasons so clearly stated in the decision last cited, it is certain that "a case by case test of federal supremacy," which is not permissible in a certification case where federal authority had been asserted over a group or class of employes which constituted an "aspect" of the general employer-employee relationship or "a separable or distinct segment" of the employer-employee relationship, is permissible in charge cases. The very nature of the terms "aspect" and "separable or distinct segment" precludes

their application to unfair labor practices which either the Congress or the legislatures of the several states may create.

For these reasons, the Bethlehem Steel Company decision is not controlling in the instant case.

(3)

Congress in enacting the Labor Management Relations Act, 1947, did not intend to strike down the Wisconsin Employment Peace Act.

In *Rice et al. v. Santa Fe Elevator Corporation et al.*, 331 U.S. 218, 230 (1947), after stating the dominant Federal canon for the construction of Federal statutes, to wit: "*the historic police powers of States (are) not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress,*" Mr. Justice Douglas says that the purpose of Congress may be evidenced in several ways. Four ways are specified as follows:

1. "The scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it."

2. "The Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject."

3. "The object sought to be obtained by the federal law and the character of obligations imposed by it may reveal the same purpose."

4. "The State policy may produce a result inconsistent with the objective of the federal statute."

It cannot be said that the scheme for federal regulation provided in the Labor Management Relations Act, 1947, is

so pervasive as to make reasonable an inference that Congress left no room for Wisconsin to supplement it. It is as true of the Labor Management Relations Act, 1947, as it was of the National Labor Relations Act of 1935, that Congress intended "to exercise whatever power is constitutionally given to it to regulate commerce by the adoption of measures for the prevention or control of certain specified acts—unfair labor practices — which provoke or tend to provoke strikes or labor disturbances affecting interstate commerce:", *National Labor Relations Board v. Fainblatt et al.*, 306 U.S. 601, 607 (1939). Where Congress intends to prevent strikes or labor disturbances through a regulation of commerce, it can not be presumed that Congress intended to prevent Wisconsin from preventing strikes or labor disturbances within its borders by the same processes which Congress has approved.

Certainly the Wisconsin statute may exist and be administered by the state agency because as was said by Chief Justice Hughes in *National Labor Relations Board v. Jones & Laughlin Steel Corporation*, 301 U.S. 1, 37 (1937) (italics ours):

> "* * * Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. * * * The question is necessarily one of degree. * * *"

(4)

The Labor Management Relations Act, 1947, does not touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.

The Wisconsin Labor Relations Act of 1937 and its successor, the Wisconsin Employment Peace Act, like the Pennsylvania Labor Relations Act, have been in force and effect since 1937. There has been little or no conflict between the Federal agency and the state agencies with respect to administration. Doubtless this absence of conflict has resulted from the fact that there is a relatively small twilight zone wherein conflict could normally have arisen. The National Labor Relations Board has unquestioned jurisdiction over the large employers of industry whose activities are nation-wide in scope. In the main, the state agencies have assumed jurisdiction over labor disputes where the employer is engaged in a business which is essentially local, or, at least, where the labor dispute among the employees of a large employer is limited to employees who work within the confines of the state, and only then, when Federal jurisdiction has not been invoked with respect to the state employees.

As the purpose of the Federal legislation is not primarily to regulate commerce, but to secure and preserve

industrial peace, it can not be said that the Federal interest is so dominant that the state be precluded from applying its own policy, when not inconsistent with Federal policy, to secure and preserve industrial amity and good will.

The Labor Management Relations Act, 1947, is not analogous to the Alien Registration Law of 1940, by which a standard for alien registration in a single integrated and all-embracing system was provided. In that instance, the Federal interest was so dominant as to preclude enforcement of the Pennsylvania Alien Registration Act: *Hines et al. v. Davidowitz et al., supra.* Neither is the Labor Management Relations Act, 1947, analogous to the United States Warehouse Act regulating warehouses engaged in the storage of grain for interstate or foreign commerce. Such warehouses were clearly in the Federal domain, and in that Act, Congress exerted such a pervasive regulatory authority as to prove a legislative intent to make the legislation all embracing and exclusive, as was held in *Rice et al. v. Santa Fe Elevator Corp., et al., supra.* These and like cases are to be distinguished from the instant case because it is apparent that if Wisconsin, Pennsylvania, and other states having labor relations acts patterned upon the Federal statute, are to be prohibited from administering the state statutes, there will be a substantially large number of labor disputes, some of which may impair or interrupt the free flow of commerce, which can not be the subject of administrative relief, either Federal or state.

Inasmuch as there has been complete cooperation between the Federal agency and the state agencies in achieving the remedial purposes of the Federal legislation,

this is a situation which calls for the application of the rule stated by Mr. Justice Frankfurter in *Union Brokerage Co. v. Jensen et al*, 322 U.S. 202, 209 (1944) that (italics ours):

> "* * * *Where the Government has provided for collaboration the courts should not find conflict.* * *"

(5)

The objects sought to be obtained, and the character of the obligations imposed, by the Labor Management Relations Act, 1947, do not reveal a legislative intent to preclude enforcement of State laws on the same subject.

Petitioner asserts that by Section 10 (a) of the Labor Management Relations Act, 1947, Congress has expressly excluded the state from assuming concurrent jurisdiction over unfair labor practices (R. 11).

Section 10 (a) of the National Labor Relations Act of 1935 empowered the National Board to prevent any person from engaging in any unfair labor practice affecting commerce, and added "*This power shall be exclusive*, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law or otherwise."

The full text of Section 10 (a) of the Labor Management Relations Act, 1947, is as follows (italics ours):

> "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: Provided, *That the Board is empowered by agreement*

with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territory statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.''

When consideration is given to the fact that Congress has deleted the words "This power shall be exclusive" and has substituted a power to "cede" jurisdiction, it cannot be said that Congress has "expressly" excluded the state from assuming concurrent jurisdiction, as contended by Petitioner (R. 11). In fact, Section 10 (a) does not evince "the clear and manifest purpose of Congress" to bar concurrent jurisdiction, which is the test of legislative intent according to repeated decisions of Your Hororable Court.

The National Labor Relations Act of 1935 did not classify industry. The question to be faced under that Act upon particular facts in each case was whether the unfair labor practices involved had such a close and substantial relation to the freedom of interstate commerce from injurious restraint that these practices could constitutionally be made the subjects of federal cognizance through provisions looking to the peaceable adjustment of labor disputes: *Santa Cruz Fruit Packing Co. v. National Labor Relations Board*, 303 U.S. 453, 467 (1938).

When passing the Labor Management Relations Act, 1947, Congress must have known, what every labor board knows, that there are many employers whose operations affect interstate commerce, who have never been a party to any proceeding before the National Labor Relations Board. There are many employers whose employees have never been organized. It is inconceivable that Congress intended to give exclusive jurisdiction over labor disputes among the employees of such employers so that the state agency could only have such jurisdiction as was "ceded," as urged by Petitioner (R. 11).

It should be noted that Congress has divided industries into two distinct classifications. The first class contains all industries excluding the mining, manufacturing, communications and transportation industries, and including the mining, manufacturing, communications and transportation industries whenever it appears that their operations are predominantly local in character. The second class contains the four named industries, viz.: mining, manufacturing, communications and transportation, if and when their operations are not predominantly local in character. Congress has not evinced a clear and manifest purpose to confer exclusive jurisdiction in all cases involving employers in the class first enumerated, merely to permit the National Labor Relations Board to cede it back to the states. To the contrary, it would seem to be the clear and manifest purpose of Congress to permit ceding of jurisdiction in cases where the National Labor Relations Board has assumed jurisdiction of the parties and of the dispute in some prior case, to the end that the state agency may administer the statute in a case pending before it.

The word "cede" has been defined as meaning "to yield up; to assign; to grant. Generally used to designate the transfer of territory from one government to another:" Black's Law Dictionary (Third Edition), at page 295. The language used in Section 10 (a) does not show a clear and manifest purpose to empower Congress to turn over to the states a jurisdiction over cases involving labor disputes where Federal authority has never been asserted. To the contrary, Congress intended to permit its agency to cede jurisdiction over cases or labor disputes where state administration was otherwise barred because Federal authority had been asserted in the particular case or labor dispute. By this permissible construction it becomes apparent that Congress has provided for concurrent jurisdiction, and has not prohibited it.

Mr. Justice Douglas says at pages 230, 231, of *Rice et al. v. Santa Fe Elevator Corporation et al., supra*, that "It is often a perplexing question whether Congress has precluded state action or by the choice of selective regulatory measures has left the police power of the States undisturbed except as the state and federal regulations collide." The four cases cited in support of this proposition will bear analysis.

In *Townsend et al. v. Yeomans et al.*, 301 U.S. 441 454 (1937), it was held that the business of tobacco warehouses at which are conducted markets for public sales of tobacco, is affected with such a public interest that a Georgia statute fixing maximum charges for handling and selling leaf tobacco is not repugnant to the Fourteenth amendment when confiscation is not shown.

In *Kelly v. State of Washington, supra*, at pages 15, 16, it was held that a statute of the State of Washington relating to the inspection and regulation of vessels is valid in so far as it provides for the inspection of hull and machinery in order to insure safety and seaworthiness and as to other requirements which lie outside the bounds of federal action thus far taken, and as to which uniformity of regulation is not needed.

In *South Carolina State Highway Department et al. v. Barnwell Bros., Inc., et al.*, 303 U.S. 177 (1938), it was held that a South Carolina Statute limiting the width of certain trucks, as applied to motor vehicles operated in interstate commerce, was not an unreasonable burden on interstate commerce, since it could not be said that the width of trucks upon highways was unrelated to their safety and cost of maintenance. Hence it was held that the South Carolina statute did not infringe the Fourteenth Amendment.

In *Union Brokerage Co. v. Jensen et al., supra* at page 212, it was said by Mr. Justice Frankfurter that (italics ours):

> *"The Commerce Clause does not deprive Minnesota of the power to protect the special interest that has been brought into play by Union's localized pursuit of its share in the comprehensive process of foreign commerce. * * * By its own force that Clause does not * * * preclude a State from giving needful protection to its citizens in the course of their contacts with business conducted by outsiders when the legislation by which this is accomplished is general in its scope, is not aimed at interstate or foreign commerce, and*

involves merely burdens incident to effective administration. * * *"*

The four cases last cited make implied congressional intent dependent upon the character of the Federal statute and upon the public interest to be served by maintaining state administration under the state statute. Surely, when the Wisconsin Employment Peace Act declares in Section 111.01 (4) that "It is the policy of the state, in order to preserve and promote the interests of the public, the employee, and the employer alike, to establish standards of fair conduct in employment relations and to provide a convenient, expeditious and impartial tribunal by which these interests may have their respective rights and obligations adjusted. While limiting individual and group rights of aggression and defense, the state substitutes processes of justice for the more primitive methods of trial by combat," it is clear and certain that the Labor Management Relations Act, 1947, should not be held to impliedly evince an intent to strike down the Wisconsin statute or preclude its administration by the Wisconsin Employment Relations Board.

(6)

Wisconsin policy has not produced a result inconsistent with or repugnant to the objectives of the Labor Management Relations Act, 1947, in the instant case.

The Wisconsin statute, insofar as is applicable and material to the instant case, is Section 111.06 (2), clauses (a), (c), and (h), to be found on pages 53, 54 of this brief. When comparison of the unfair labor practices defined in the Wisconsin statute is made with the unfair labor practices defined in the Labor Management Relations Act, 1947, to be found on pages 48-52 of this brief, it is certain that no Wisconsin employer or employee is deprived of rights protected or granted by the Constitution of the United States or by the federal statute.

The judgment of the Court below should be affirmed for the same reasons that the judgment of the Supreme Court of Wisconsin was affirmed by Your Honorable Court in *Allen-Bradley Local No. 1111 etc., et al. v. Wisconsin Employment Relations Board et al., supra*, wherein it was said by Mr. Justice Douglas, at page 751 (Italics ours):

> "* * * *Since the state system of regulation, as construed and applied here, can be reconciled with the federal Act and since the two as focused in this case can consistently stand together, the order of the state*

Board must be sustained under the rule which has long obtained in this Court. • • •

In sum, we cannot say that the mere enactment of the National Labor Relations Act without more excluded state regulation of the type which Wisconsin has exercised in this case. *It has not been shown that any employee was deprived of rights protected or granted by the federal Act or that the status of any of them under the federal Act was impaired. Indeed if the portions of the state Act here invoked are invalid because they conflict with the federal Act, then so long as the federal Act is on the books it is difficult to see how any State could under any circumstances regulate picketing or disorder growing out of labor disputes of companies whose business affects interstate commerce.*"

Respectfully submitted,

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APPENDIX NO. 1

The pertinent provision of the Labor Management Relations Act, 1947, is Section 8, to be found in 29 U.S.C.A., Section 158 (pocket part), which is as follows:

Sec. 158. Unfair labor practices

(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

(2) to dominate or interfere with the information or administration of any labor organization or contribute financial or other support to it; Provided, That subject to rules and regulations made and published by the Board pursuant to section 156 of this title, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action

defined in section 158 (a) of this title as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 159 (a) of this title, in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) if, following the most recent election held as provided in section 159 (e) of this title the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement: Provided further, That no employer shall justify any discrimination against an employee for non-membership in a labor organization (a) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this subchapter;

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159 (a) of this title.

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 159 (a) of this title;

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer

or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 159 of this title; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order of certification of the Board determining the bargaining representative for employees performing such work: Provided, That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this subchapter;

(5) to require of employees covered by an agreement authorized under subsection (a) (3) of this section the payment, as a condition precedent to becoming a member

of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected; and

(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed. * * *

APPENDIX NO. 2

The pertinent provision of the Wisconsin Employment Peace Act (Wisconsin Laws of 1939, Chapter 57, as amended) is Section 111.06 which defines unfair labor practices, as follows:

(1) It shall be an unfair labor practice for an employer, individually or in concert with others:

(a) To interfere with, restrain or coerce his employees in the exercise of the rights guaranteed in Section 111.04.

(b) To initiate, create, dominate or interfere with the formation or administration of any labor organization or contribute financial support to it, provided that an employer shall not be prohibited from reimbursing employees at their prevailing wage rate for time spent conferring with him, nor from cooperating with representatives of at least a majority of his employees in a collective bargaining unit, at their request, by permitting employee organizational activities on company premises or the use of company facilities where such activities or use create no additional expense to the company.

(c) 1 To encourage or discourage membership in any labor organization, employee agency, committee, association or representation plan by discrimination in regard to hiring, tenure or other terms or conditions of employment, * * *.

(d) To refuse to bargain collectively with the representative of a majority of his employees in any collective bargaining unit; provided, however, that where an employer files with the Board a petition requesting a determination as to majority representation, he shall not be deemed to have refused to bargain until an election has been held and the result thereof has been certified to him by the Board.

(e) To bargain collectively with the representatives of less than a majority of his employees in a collective bargaining unit, or to enter into an all-union agreement except in the manner provided in subsection (1) (c) of this section.

(f) To violate the terms of a collective bargaining agreement (including an agreement to accept an arbitration award).

(g) To refuse or fail to recognize or accept as conclusive of any issue in any controversy as to employment relations the final determination (after appeal, if any) of any tribunal having competent jurisdiction of the same or whose jurisdiction the employer accepted.

(h) To discharge or otherwise discriminate against an employee because he has filed charges or given information or testimony in good faith under the provisions of this chapter.

(i) To deduct labor organization dues or assessments from an employee's earnings, unless the employer has been presented with an individual order therefor, signed by the employee personally, and terminable at the end of

any year of its life by the employee giving at least thirty days written notice of such termination.

(j) To employ any person to spy upon employees or their representatives respecting their exercise of any right created or approved by this chapter.

(k) To make, circulate or cause to be circulated a blacklist as described in Section 343.682.

(1) To commit any crime or misdemeanor in connection with any controversy as to employment relations.

(2) It shall be an unfair labor practice for an employee individually or in concert with others:

(a) To coerce or intimidate an employee in the enjoyment of his legal rights, including those guaranteed in Section 111.04, or to intimidate his family, picket his domicile, or injure the person or property of such employee or his family.

(b) To coerce, intimidate or induce any employer to interfere with any of his employees in the enjoyment of their legal rights, including those guaranteed in Section 111.04, or to engage in any practice with regard to his employees which would constitute an unfair labor practice if undertaken by him on his own initiative.

(c) To violate the terms of a collective bargaining agreement (including an agreement to accept an arbitration award).

(d) To refuse to fail to recognize or accept as conclusive of any issue in any controversy as to employment relations the final determination (after appeal, if any) of

any tribunal having competent jurisdiction of the same or whose jurisdiction the employees or their representatives accepted.

(e) To cooperate in engaging in, promoting or inducing picketing (not constituting an exercise of constitutionally guaranteed free speech), boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employees of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike.

(f) To hinder or prevent, by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance.

(g) To engage in a secondary boycott; or to hinder or prevent, by threats, intimidation, force, coercion or sabotage, the obtaining, use or disposition of materials, equipment or services; or to combine or conspire to hinder or prevent, by any means whatsoever, the obtaining, use or disposition of materials, equipment or services, provided, however, that nothing herein shall prevent sympathetic strikes in support of those in similar occupations working for other employers in the same craft.

(h) To take unauthorized possession of property of the employer or to engage in any concerted effort to interfere with production except by leaving the premises in an orderly manner for the purpose of going on strike.

(i) To fail to give the notice of intention to strike provided in Section 111.11.

(j) To commit any crime or misdemeanor in connection with any controversy as to employment relations.

(1) To engage in, promote or induce a jurisdictional strike.

(3) It shall be an unfair labor practice for any person to do or cause to be done on behalf of or in the interest of employers or employees, or in connection with or to influence the outcome of any controversy as to employment relations any act prohibited by subsections (1) and (2) of this section.'